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No. 05-1099

IN THE

Supreme Court of the United States

OCTOBER TERM, 2005

GOKHAN UNAL

Petitioner,

v.

FERIDE ELA AKINCI-UNAL

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE MASSACHUSETTS APPEALS COURT

PETITIONER'S REPLY MEMORANDUM

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In her opposition, respondent makes three demonstrably futile points. First, she asserts that petitioner's statement of the facts is "somewhat incomplete" [Opp. at 2]. She fails, however, to point to any facts which have been omitted. The record is clear. The parties left Massachusetts while still married and took up residence in Bahrain. There, the marriage fell apart and respondent returned to her family in her homeland of Turkey. More than two years after departing Massachusetts as petitioner's wife, she returned to Massachusetts when petitioner filed a divorce proceeding in Turkey. No shades of gray color the stark issue presented by the Appeals Court's ruling, *viz.*, whether the "minimum contacts" test of the Due Process Clause is satis-

fied merely because the parties once lived in Massachusetts before jointly abandoning the state.[1]

Second, and ironically, a case relied on by respondent actually demonstrates why Massachusetts cannot permissibly exercise jurisdiction over her property claims against petitioner under the Due Process Clause.

Respondent cites *Steel v. United States*, 813 F.2d 1545 (9th Cir. 1987) for the principle that "personal jurisdiction is appropriate over a non-resident where monetary claims arise out of a marital relationship which previously existed in the forum state" [Opp. at 16]. She misstates the holding. *Steel* held that a California court had personal jurisdiction of a divorce judgment and subsequent claim to military retirement pay against. The court's ruling was expressly premised on the very facts which do not exist here - the parties' separation occurred in California, where the ex-wife then remained, and the marital property was located there. *Id.* at 1549-52. As the *Steel* court observed, the ex-wife's claim arose "out of the marriage *and separation that led to*" the conflicting divorce judgments; "[a]ll of the family's *ties and property* are within California"; and the assertion of jurisdiction by a California court was therefore constitutional precisely because "the problem regarding the division of [the couple's] marital property is intimately bound up with [the ex-husband's] contacts with California", including the marital domicile "and his separation from his wife and children there." *Id.* [emphasis added]. *Steel*'s formulation follows this Court's suggestion that a constitutional measure of personal jurisdiction should recognize that property claims "arise[] from a separation" and that a court therefore should look to where the separation

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[1] The Massachusetts location of petitioner's employer [Opp. at 3] is constitutionally insufficient for jurisdiction of his "personal, domestic relations". *See Kulko v. Superior Court of California*, 436 U.S. 84, 97 (1978); *Katz v. Katz*, 310 N.J.Super. 25, 27-32, 707 A.2d 1353, 1354-56 (A.D. 1998).

"occurred" rather than merely to where the "marital relationship" once was located. *Kulko v. Superior Court of California*, 436 U.S. 84, 97 (1978). Here, of course, the separation did not occur until after the parties jointly abandoned Massachusetts. Accordingly, *Steel* undermines respondent's argument.

Finally, respondent minimizes disagreement among the state courts about the application of the "minimum contacts" test. In particular, she dismisses the ruling in *Garrett v. Garrett*, 668 So.2d 991 (Fla. 1996) [Opp. at 20]. But the *Garrett* court stated unequivocally that the Due Process Clause would be violated were a Florida court to assert jurisdiction where the couple left Florida while married, where they therefore "effectively abandoned" Florida, and where the wife "did not return to Florida until after the parties separated". *Id.* at 994. Under the Appeals Court's "heft" standard, however, and under respondent's "magnitude of contacts" version [Opp. at 14], the *Garrett* court would have to find the requisite "minimum contacts" because the parties while married had lived in Florida for more than twice the duration of their subsequent domicile in Texas. *Id.* at 992. In short, *Garrett* cannot be reconciled with the Appeals Court's misapplication of the Due Process Clause.

Respondent also tries to distinguish the Comment to the Uniform Interstate Family Support Act which indicates that the Appeals Court's ruling is wrong. *See* 9 U.L.A. 186, 186-87 (2001) [Pet. at 16-17]. Respondent cites a Colorado case under that state's version of the uniform law which held that the defendant's "purposeful abuse and harassment" of his wife in Texas, "forcing [her] to Colorado" where he "knew that [her] sole family ties" were located, satisfied the "minimum contacts" test. *In re Marriage of Malwitz*, 99 P.3d 56, 63 (Colo. 2004) [Opp. at 22]. *Malwitz*, however, in no way "contradict[s]" the Comment cited by petitioner [Opp. at 22]. Instead, the Comment addresses the

very different circumstance presented here, where the parties voluntarily and jointly abandon the state and one returns after a period of years to rekindle jurisdiction. 9 U.L.A. at 186-87.[2]

The constitutional posture of this case is unchanged. The Appeals Court's ruling distorts due process analysis in a way which supports blatant forum-shopping. That ruling therefore conflicts with the Due Process Clause in circumstances which require decision by this Court, including the importance of this recurring question and the evident disagreement among the state courts.

Respectfully submitted,

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[2] Of course, had this case involved child support and the abuse and harassment alleged in *Malwitz*, the place to which respondent *foreseeably* would have fled is Turkey, not Massachusetts. *In re Marriage of Malwitz*, 99 P.3d at 63 [Pet. at 3a n. 1, 15a]. That is in fact where she voluntarily removed from Bahrain and where petitioner filed a divorce action [Pet. at 3a n. 1].It should be noted that even as to the different context in *Malwitz*, the court's ruling was the subject of a dissenting opinion joined in by three justices. *Id.* at 64-66.